

## 1 HOUSE BILL NO. 178

2 INTRODUCED BY FRITZ

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING AN EMPLOYER, UP TO JULY 1, 2005, TO EMPLOY  
 5 A CERTIFIED TEACHER, SPECIALIST, OR ADMINISTRATOR WHO ~~RETIRED ON OR BEFORE AUGUST~~  
 6 ~~31, 2002~~, HAS BEEN RECEIVING A RETIREMENT ALLOWANCE FOR AT LEAST 12 MONTHS TO BE  
 7 REEMPLOYED WITHOUT THE LOSS OR INTERRUPTION OF TEACHER RETIREMENT BENEFITS;  
 8 DEFINING "EMPLOYER"; REQUIRING AN EMPLOYER TO REPORT MONTHLY EMPLOYMENT DATA TO  
 9 THE OFFICE OF PUBLIC INSTRUCTION AND THE TEACHERS' RETIREMENT SYSTEM; ~~LIMITING THE~~  
 10 ~~CALCULATION OF BENEFITS IF A RETIRED MEMBER RETURNS TO TEACHING~~; REQUIRING A REPORT  
 11 BY THE OFFICE OF PUBLIC INSTRUCTION AND THE TEACHERS' RETIREMENT SYSTEM TO THE 2005  
 12 LEGISLATURE; AMENDING ~~SECTIONS~~ SECTION 19-20-804 ~~AND 19-20-1001~~, MCA; AND PROVIDING AN  
 13 ~~IMMEDIATE EFFECTIVE DATE AND~~, AN APPLICABILITY DATE, AND A TERMINATION DATE."

14  
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16  
 17 NEW SECTION. **Section 1. Reemployment of certain retired teachers, specialists, or**  
 18 **administrators -- limitations -- employer defined.** (1) ~~Beginning on [the effective date of this act] and up to~~  
 19 ~~July 1, 2005~~ SUBJECT TO THE PROVISIONS OF THIS SECTION:

20 (a) a teacher, specialist, or administrator who ~~retired on or before August 31, 2002~~, HAS BEEN RECEIVING  
 21 A RETIREMENT ALLOWANCE, EXCEPT A DISABILITY RETIREMENT ALLOWANCE PURSUANT TO PART 9 OF THIS CHAPTER, FOR  
 22 AT LEAST 12 MONTHS may be employed on a part-time or full-time basis by an employer without the loss or  
 23 interruption of any payments of retirement benefits if:

24 (i) the member ~~is fully or temporarily certified by the office of public instruction~~ HOLDS A VALID CERTIFICATE  
 25 UNDER THE PROVISIONS OF 20-4-106; and

26 (ii) the employer provides evidence to the office of public instruction each year that the employer has  
 27 been unable to fill the position ~~with~~ BECAUSE THE EMPLOYER HAS RECEIVED NO APPLICATIONS FOR THE OPEN POSITION  
 28 OR HAS NOT RECEIVED AN ACCEPTANCE TO AN OFFER TO FILL THE POSITION FROM a nonretired teacher, specialist, or  
 29 administrator;

30 (b) an employer shall by the 15th day of each month report to the office of public instruction and to the

1 teachers' retirement system the name, social security number, and gross earnings of each teacher, specialist,  
2 or administrator employed in the preceding month under the provisions of this section;

3 (c) a retired member reemployed under this section is ineligible for active membership under 19-20-302;  
4 and

5 (d) the office of public instruction and the teachers' retirement system shall report to the appropriate  
6 committee in the ~~2005~~ 2007 legislative session regarding the implementation and results of this section.

7 (2) A RETIREE REEMPLOYED PURSUANT TO THIS SECTION MUST BE CONSIDERED AN ACTIVE MEMBER FOR THE  
8 PURPOSES OF CALCULATING RETIREMENT SYSTEM CONTRIBUTIONS REQUIRED UNDER 19-20-604 AND 19-20-605.

9 (3) A RETIREE REEMPLOYED PURSUANT TO THIS SECTION IS EXEMPT FROM THE EARNINGS AND EMPLOYMENT  
10 LIMITS PROVIDED IN 19-20-804(2) THROUGH (5).

11 (4) IF REEMPLOYED IN A POSITION COVERED BY A COLLECTIVE BARGAINING AGREEMENT PURSUANT TO TITLE  
12 39, CHAPTER 31, THE RETIREE IS SUBJECT TO ALL TERMS AND CONDITIONS OF THE AGREEMENT AND IS ENTITLED TO ALL  
13 BENEFITS AND PROTECTIONS PROVIDED BY THE AGREEMENT.

14 (5) THE BOARD MAY ADOPT RULES TO IMPLEMENT THIS SECTION.

15 ~~(2)(6)~~ As used in this section, "employer" means a ~~K-12~~ PUBLIC school district, AS DEFINED IN 20-6-101  
16 AND 20-6-701, the Pine Hills youth correctional facility, the Riverside correctional facility FACILITIES, SPECIAL  
17 EDUCATION COOPERATIVES, and the Montana school for the deaf and blind.

18  
19 ~~NEW SECTION. Section 2. Termination or recalculation of retirement benefits.~~ Beginning on [the  
20 effective date of this act] and up to July 1, 2005:

21 ~~(1) all payments of retirement benefits must be terminated if a retired member, after being reemployed~~  
22 ~~under the provisions of [section 1] without the loss or interruption of retirement benefit payments, subsequently~~  
23 ~~elects to become an active member;~~

24 ~~(2) upon retirement as an active member, all employee and employer contributions due under~~  
25 ~~19-20-602 and 19-20-605 must be withheld and reported by the employer to the teachers' retirement system;~~  
26 and

27 ~~(3) at the time that the member terminates employment and retires, a second retirement benefit must~~  
28 ~~be calculated pursuant to this section based only on the service and compensation earned after the date of~~  
29 ~~reemployment and must be added to the original benefit that the retired member was receiving at the time that~~  
30 ~~the member was reemployed under [section 1].~~

1  
 2           **Section 2.** Section 19-20-804, MCA, is amended to read:  
 3           **"19-20-804. Allowance for service retirement.** (1) ~~Upon On [the effective date of this act]~~  
 4           ~~(a) upon~~ EXCEPT AS PROVIDED IN [SECTION 1], UPON termination, a member who has attained normal  
 5 retirement age must receive a retirement allowance equal to one-sixtieth of the member's average final  
 6 compensation, as limited by 19-20-715, multiplied by the sum of the number of years of creditable service and  
 7 service transferred under 19-20-409.;

8           ~~(2)(b)(2) Except except EXCEPT~~ as provided in ~~[section 1] or in~~ subsection (4) ~~(1)(d) of this section (4)~~,  
 9 a retired member may be employed part-time in a position specified in 19-20-302 and may earn, without loss  
 10 of retirement benefits, an amount not to exceed the greater of:

11           ~~(a)(i)(A)~~ one-third of the sum of the member's average final compensation; or

12           ~~(b)(ii)(B)~~ one-third of the median of the average final compensation for members retired during the  
 13 preceding fiscal year as determined by the retirement board.;

14           ~~(3)(c)(3) On Each year on July 1 of each year~~ following the member's retirement effective date, the  
 15 maximum earning amount allowed under subsection ~~(2)(a) (1)(b)(i) (2)(A)~~ is increased by an amount equal to  
 16 the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the  
 17 United States department of labor or its successor agency in the preceding year.;

18           ~~(4) (a)(d) (i)(4) (A) Except except EXCEPT~~ as provided in ~~[section 1] and~~ subsection ~~(5) (1)(e) (5) of this~~  
 19 ~~section~~, the retirement benefit of a retired member employed in a full-time position or earning more than allowed  
 20 by subsection ~~(2) (1)(b) (2)~~ must be canceled beginning in the month in which the retired member returns to  
 21 full-time employment or earns more than allowed.;

22           ~~(b)(ii)(B) The the THE~~ retirement benefits of a retired member who was employed in a full-time position  
 23 or who exceeded the amount that the retired member was eligible to earn under subsection ~~(2) (1)(b) (2)~~ and  
 24 who was reemployed for less than 1 year must, upon termination of employment, be reinstated beginning in the  
 25 later of either the month following termination or July 1 of the school year following the date on which the retired  
 26 member was reemployed. The reinstated retirement benefit is the amount that the retired member would have  
 27 been entitled to receive had the retired member not returned to employment.

28           ~~(c)(iii)(C) Upon upon UPON~~ retirement after cancellation of a retired member's benefit pursuant to  
 29 subsection ~~(4)(a) (1)(d) (i) (4)(A)~~, a retired member who is reemployed as an active member for a minimum of  
 30 1 year of full-time service must receive a recalculated benefit. The recalculated benefit is based on the service

1 credit accumulated at the time of the member's previous retirement plus any service credit accumulated  
2 subsequent to reemployment.

3 ~~(5)(e)(5) If if~~ IF an early-retired member under 19-20-802 is reemployed with the same employer within  
4 30 days from the member's effective date of retirement or if the early-retired member is guaranteed  
5 reemployment with the same employer, the member must be considered to have continued in the status of an  
6 active member and not to have separated from service. Any retirement allowance payments received by the  
7 member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement  
8 allowance must be terminated.

9 ~~\_\_\_\_\_ (2) On July 1, 2005:~~

10 ~~\_\_\_\_\_ (a) upon termination, a member who has attained normal retirement age must receive a retirement~~  
11 ~~allowance equal to one-sixtieth of the member's average final compensation, as limited by 19-20-715, multiplied~~  
12 ~~by the sum of the number of years of creditable service and service transferred under 19-20-409;~~

13 ~~\_\_\_\_\_ (b) except as provided in subsection (3)(b), a retired member may be employed part-time in a position~~  
14 ~~specified in 19-20-302 and may earn, without loss of retirement benefits, an amount not to exceed the greater~~  
15 ~~of:~~

16 ~~\_\_\_\_\_ (i) one-third of the sum of the member's average final compensation; or~~

17 ~~\_\_\_\_\_ (ii) one-third of the median of the average final compensation for members retired during the preceding~~  
18 ~~fiscal year as determined by the retirement board.~~

19 ~~\_\_\_\_\_ (3) (a) On July 1 of each year following the member's retirement effective date, the maximum earning~~  
20 ~~amount allowed under subsection (2)(b)(i) is increased by an amount equal to the consumer price index increase~~  
21 ~~for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or~~  
22 ~~its successor agency in the preceding year.~~

23 ~~\_\_\_\_\_ (b) (i) Except as provided in subsection (3)(c), the retirement benefit of a retired member employed in~~  
24 ~~a full-time position or earning more than allowed by subsection (2)(b) must be canceled beginning in the month~~  
25 ~~in which the retired member returns to full-time employment or earns more than allowed.~~

26 ~~\_\_\_\_\_ (ii) The retirement benefits of a retired member who was employed in a full-time position or who~~  
27 ~~exceeded the amount that the retired member was eligible to earn under subsection (2)(b) and who was~~  
28 ~~reemployed for less than 1 year must, upon termination of employment, be reinstated beginning in the later of~~  
29 ~~either the month following termination or July 1 of the school year following the date on which the retired member~~  
30 ~~was reemployed. The reinstated retirement benefit is the amount that the retired member would have been~~

1 ~~entitled to receive had the retired member not returned to employment.~~

2 ~~—— (iii) Upon retirement after cancellation of a retired member's benefit pursuant to subsection (3)(b)(i), a~~  
 3 ~~retired member who is reemployed as an active member for a minimum of 1 year of full-time service must~~  
 4 ~~receive a recalculated benefit. The recalculated benefit is based on the service credit accumulated at the time~~  
 5 ~~of the member's previous retirement plus any service credit accumulated subsequent to reemployment.~~

6 ~~—— (c) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days~~  
 7 ~~from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with~~  
 8 ~~the same employer, the member must be considered to have continued in the status of an active member and~~  
 9 ~~not to have separated from service. Any retirement allowance payments received by the member must be repaid~~  
 10 ~~to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be~~  
 11 ~~terminated."~~

12

13 ~~—— **Section 4.** Section 19-20-1001, MCA, is amended to read:~~

14 ~~—— "**19-20-1001. Allowances for death of member.** (1) If a member dies before retirement, the member's~~  
 15 ~~accumulated contributions must be paid to the member's estate or to the beneficiary that the member nominated~~  
 16 ~~by a written application in a manner prescribed by the board and filed with the retirement board prior to the~~  
 17 ~~member's death.~~

18 ~~—— (2) (a) In lieu of benefits provided for in subsection (1), if the deceased member qualified by reason of~~  
 19 ~~service for a retirement benefit, the nominated beneficiary may elect to receive a retirement allowance. The~~  
 20 ~~retirement allowance must be determined as prescribed in 19-20-804(1)(a) or (2)(a) and section 5, Chapter 549,~~  
 21 ~~Laws of 1981, in the same manner as if the member elected option A provided for in 19-20-702(2)(a):~~

22 ~~—— (b) The effective date of the retirement allowance provided for in subsection (2)(a) is the earlier of:~~

23 ~~—— (i) the first of the month following the date of death; or~~

24 ~~—— (ii) the effective date of the member's retirement, as acknowledged in writing by the retirement system~~  
 25 ~~before the member's death.~~

26 ~~—— (c) In the event that payments made to the beneficiary do not equal the amount of the member's~~  
 27 ~~accumulated contributions before the member's death, the difference between the total retirement allowance~~  
 28 ~~payments made and the amount of the accumulated contributions at the time of the member's death must be~~  
 29 ~~paid to the beneficiary's estate.~~

30 ~~—— (3) If the deceased member had 5 or more years of creditable service and was an active member in~~

1 ~~the state of Montana within 1 year before the member's death, a lump-sum death benefit of \$500 is payable to~~  
 2 ~~the member's designated beneficiary.~~

3 ~~———(4) If a deceased member had 5 or more years of creditable service and was an active member in the~~  
 4 ~~state of Montana within 1 year prior to the member's death, the sum of \$200 a month must be paid to each minor~~  
 5 ~~child of the deceased member until the child reaches 18 years of age.~~

6 ~~———(5) If the member nominated more than one beneficiary to receive payment of a benefit provided by this~~  
 7 ~~section upon the member's death, then:~~

8 ~~———(a) each beneficiary is entitled to share in that benefit; and~~

9 ~~———(b) if a beneficiary predeceases the member, the benefit must be divided among the surviving~~  
 10 ~~beneficiaries."~~

11  
 12 NEW SECTION. Section 3. Codification instruction. [Sections SECTION 1 and 2] are IS intended to  
 13 be codified as an integral part of Title 19, chapter 20, part 8, and the provisions of Title 19, chapter 20, part 8,  
 14 apply to [sections SECTION 1 and 2].

15  
 16 NEW SECTION. Section 4. Saving clause. [This act] does not affect rights and duties that matured,  
 17 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

18  
 19 NEW SECTION. Section 5. Effective date -- applicability. [This act] is effective on ~~passage and~~  
 20 ~~approval~~ JULY 1, 2003, and applies to teachers, specialists, and administrators who are employed for the school  
 21 fiscal year beginning on or after [the effective date of this act] and who are earning more than one-third of the  
 22 average final compensation provided for under 19-20-804.

23  
 24 NEW SECTION. SECTION 6. TERMINATION. [THIS ACT] TERMINATES JULY 1, 2006.

25 - END -